

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CASE NO.: 18-80101-CR-MARRA

BOSCO VEGA,
Defendant.

_____/

SENTENCING MEMORANDUM

COMES NOW, the Defendant, Bosco Vega, by and through the undersigned counsel, pursuant to Title 18 U.S.C. § 3553(a) and files this Sentencing Memorandum, in support of his upcoming sentencing, which is currently scheduled for February 1, 2019.

I. BACKGROUND

Bosco Vega, who is currently 52 years-old, immigrated from Nicaragua to the United States with his family in 1983. His parents went through the hardship of leaving their native soil and their extended family, in hopes of finding greater opportunities for their children and a safer, more stable quality of life for them all. Bosco was raised in a loving household that emphasized the importance of education, religion, and being morally responsible. His parents were supportive of his and his three sisters interests and hobbies. Bosco reports that the socioeconomic conditions in the home were good, as his mother worked as a school

principal and homemaker prior to her retirement, and his father was employed in the AC/HVAC industry as a repairman. His family all still reside in South Florida and are aware of his legal situation. The family is emotionally invested in assisting Bosco with his ongoing rehabilitation process and will be a strong support network for him as he re-enters our community.

Bosco graduated highschool at Miami Beach Senior High School in 1985. Although he didn't go onto furthering his education at a university setting, Bosco has always placed high importance in maintaining stable employment and ensuring he has the means to earn a reasonable lifestyle that allows him independence and not to be a financial strain on his family. Initially he worked as a manual laborer installing office furniture through an office supply outfitter. He then shifted to selling insurance. In 1999 Bosco started working in the real estate industry, where he has made his living as a licensed real estate agent since June 1999.

Bosco Vega is in good health, currently still employed in real estate, and does not suffer any alcohol or controlled substance addiction or abuse. He has been focused on work and distancing himself from the relationships that negatively influenced him to engage and participate in the conspiracy at issue in the substantive case before the Court. He has moved back in with his parents and has surrendered the freedoms and independence that adulthood brought with it. This has been a difficult and humbling experience. He recognizes that his errors should not be a punishment to his parents or family, and he has hopes of getting his own residence (rental) and getting back on his feet in short order. He fully understands that

the situation he finds himself in was by his own doing. He has never been convicted of a crime and has never previously been incarcerated. Bosco is hopeful that he can earn an opportunity to prove to this Court that he can conduct himself appropriately and resist future opportunities to make money through unlawful fraud. He is a low risk for recidivist behavior and does not currently pose any danger to our South Florida community.

Bosco's entire family have become United States citizens. His parents, sisters, two adult nephews, and one adult niece have enjoyed a generation of prosperity, health, and stability living in the United States. They are a law abiding family that takes joy in each other and their mutual accomplishments. Although he has lived here for 35 years, Bosco has not gone through the process of becoming a citizen. He is deeply afraid that this felony conviction will have a negative consequence on his ability to stay in the U.S. and will force him to leave his family and move back to a land in which he has no ties, no support, and no people. It is a daunting prospect that has led to him having to deal with elevated levels of stress and anxiety.

Bosco Vega pled guilty to one count of engaging in a monetary transaction affecting interstate commerce, through a financial institution, in criminally derived property in violation of Title 18 U.S.C. §1957 & 2. The advisory guideline range for that offense given the Defendant's applicable Criminal History Category I, and his acceptance of responsibility, renders a total Offense Level of 16 and a range of 21-27 months. The Government has filed a motion to depart downward from the advisory range based upon the Defendant's cooperation pursuant to §5K1.1. The Government recommends a total sentence of one year

and one day of incarceration. The Defense believes that a sentence that has an incarceration component that exceeds one year will have a greater negative impact on the Defendant's immigration status than one that does not. Therefore, the Defense urges this court to issue a sentence that focuses on supervision and rehabilitation rather than incarceration and to fashion a sentence that is less than one year in jail.

II. STATUTORY SENTENCING FACTORS

Pursuant to United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005), the United States Sentencing Guidelines (USSG) are no longer mandatory, but are rather advisory. The federal sentencing process has now adopted a two step approach. (See Fed. R. Crim. P. 11(M) amended December 1, 2007). First, the Court is to resolve any disputed guideline issues and determine the advisory guideline range. Second, the Court is to consider if there are any factors that may warrant a departure from the advisory guideline range. As before Booker, the Court is to depart when it is warranted under the facts and circumstances of a particular case. "The application of the guidelines is not complete until the departures, if any, that are warranted are appropriately considered." United States v. Jordi, 418 F.3d 1212, 1215 (11th Cir. 2005).

Title 18 U.S.C. §3553(a) directs the Court to impose "a sentence sufficient, but not greater than necessary" to comply with the purposes of sentencing set forth in §3553(a) (2). According to Section (a) "in determining the particular sentence to be imposed [,]" the Court shall consider :

- (1) the nature and circumstance of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

- (A) reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense;
- (B) provides adequate deterrence to criminal conduct;
- (C) protects the public from future crimes of the defendant and;
- (D) provides the defendant with the needed educational or vocational training, medical care, or correctional treatment in the most effective manner.

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

* * * *

(5) any pertinent policy statement--

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(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. §3553(a)(1)-(7).

“The guidelines are not only *not mandatory* on sentencing courts; they are also not to be presumed reasonable.” Nelson v. United States, 555 U.S. 350, 352, 129 S. Ct. 890, 892 (2009). The Supreme Court has made it clear that a District Court’s exclusive reliance on a Sentencing Guidelines calculation is erroneous, and that a lawful sentence may not be imposed on the assumption by the District Court that the Sentencing Guidelines calculation is reasonable. It must, instead, be based on the statutory criteria in 18 U.S.C. §3553, and the

District Court must explain what weight is being given to the statutory criteria at the time sentence is imposed. Booker further directs that the sentencing court must take into account all of the factors that are outlined in 18 U.S.C. §3553.

A. § 3553(a) (1) the nature and circumstances of the offense and the history and characteristics of the Defendant.

The nature and circumstances of the offense are clearly outlined by the United States Probation Department in the Pre-Sentence Investigation Report (PSR). The seriousness of the charged conduct is substantial. The Defendant participated in a kick-back scheme and accepted payment from a company that he knew was involved in improper practices that were defrauding others. Although the Defense would suggest that he did not go out looking for this opportunity out of feelings of greed or desperation, he also did not have the backbone or strength to turn down his friend when he was first offered an opportunity to engage and prosper in a scheme that was so obviously corrupt. Through his participation he facilitated the evolution and continuation of the scheme.

Bosco Vega did not begin the practices that led to Smart Lab's improper billing for fraudulent testing and their improper relationship with rehabilitation clinics though. Bosco was a long-time friend of co-defendant Lanny Fried. Fried had a history of making money and socializing with celebrities. He was hardworking, bright, and extremely charismatic. He appeared to be a shining success from the outside looking in. It was easy to become enamored and sucked into a cycle of engaging in questionable practices to appease Fried. When Fried presented Bosco with the opportunity to continue the role he (Fried) previously

held with Smart Labs, Bosco should have said no. Bosco was worldly enough to understand that his lack of experience in the healthcare field, the requirements of making cash payments back to clinic owners, and a host of other activities that Bosco witnessed while spending time around Fried, all equaled one conclusion; that this was criminal activity. Absent his friendship with Fried, Bosco Vega never would have found his way into a conspiracy involving the players at issue here. Bosco is guilty of having poor judgment and not resisting the temptation of easy payments. Although he was titled a sales representative his role within the scheme was to act as a functional errand boy. He was a go-between for messages and payments. He may not be deserving a minor role reduction under §3B1.2, but the Defense prays the Court will consider the manner in which the Defendant got involved in the underlying scheme and his purpose and role within the scheme as deserving of receiving mitigation in punishment compared to those that played a larger role and were involved in creating the practices that led to the fraud at issue.

Given the seriousness of this offense, a substantial punishment should issue that is equitably in balance with the defendant's criminal history and his individual characteristics. The Defendant has never previously received a criminal punishment of incarceration. The criminal conduct he is to be sentenced for ended over one year ago, and his behavior during the interim period has been exemplary. The Defendant was notified of the investigation after a time that he had withdrawn from the conspiracy, and from that moment on, he only acted in a manner that demonstrated that he wanted to take responsibility for what he had done and assist law enforcement in any manner that he could. Meaningful cooperation was achieved well before the filing of an information. That cooperation continued from his initial meeting

onwards until he was called by the United States to testify as witness in a district court trial. This Court has a track record of almost 14 months to consider, in deciding whether the Defendant poses as a strong candidate to resist recidivist behavior. Many individuals promise the court a future of reformed behavior at the time of sentencing, but here the Court can have confidence that Bosco will continue on a path that he began over a year ago.

Bosco has a family that depend on his financial contributions and emotional support. The defense prays the Court will strongly consider the Defendant's lack of criminal history, his reformed behavior over the year, and his role and relationship with his family members, in balancing the need for incarceration versus supervision in creating a just and fair punishment in this cause.

B. § 3553 (a)(2)(B) To afford adequate deterrence to criminal conduct.

Bosco will likely be removed from his family and friends and forced to serve some jail sentence for improperly profiting and laundering stolen funds. This scheme did not make him rich. He will miss an incalculable amount of life events within his community of friends and family which cannot be replaced or recreated. The penalty for his choices are severe. No member of our South Florida community is jealous of his situation or would consider that the benefit associated with his ill-gotten gains as worth the price of the upcoming punishment. He is deterred from engaging in recidivist behavior. Given the pending substantial incarceration penalty, the public is already deterred from following his lead and replicating his criminal acts. A longer prison sentence is not needed to achieve a goal, which has already been realized.

C. §3553(a)(2)(C) To protect the public from further crimes of the defendant.

As previously stated, Bosco has not engaged in illegal conduct for over a year. He maintains steady legitimate employment. He is reformed. He is fully aware of the inappropriateness of his acts. He was not participating in this fraud to feed a drug addiction or serve any other individual vice. He failed to resist an illicit opportunity when it arrived. He will not seek out improper gains in the future. He will not fail to resist temptation again. The reasons why most people get involved in crime do not apply to him any longer. The Court can take confidence that he poses no threat to the public of committing future crimes.

D. §3553(a)(6) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

The Defense suggests that the Defendant's role in the fraud was similar, if not slightly lesser, than co-defendant Lawrence Weisberg. Weisberg was also a sales representative with Smart Labs, but unlike the Defendant, he was a licensed attorney who likely utilized his experience and knowledge within that field to help orchestrate and facilitate the charged fraud. Like the Defendant, Weisberg cooperated, and earned a motion for downward departure by the Government. Like the Defendant, Weisberg had zero criminal history points. The Defense also believes that Weisberg's profit in the scheme was larger than the Defendant's earnings, which were reduced by the kickbacks he was paying to Chatman (clinic owner), Fried, and others. Weisberg received a sentence of 6 months of incarceration. The Defense asks that the Court consider this co-conspirator's sentence when determining a fair and just punishment for Bosco Vega.

CONCLUSION

For the reasons suggested in this memorandum the defendant implores the court to exercise its discretion and fashion a sentence in which the Defendant serves 6 months of incarceration followed by 3 years of supervised release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of January, 2019, I electronically filed the foregoing pleading with the Clerk of the Court by using the CM/ECF system which will send a notice of the electronic filing to all counsel of record in this cause.

By: /s/ Jordan M. Lewin
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